

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Chambers of
Joseph A. Dickson
United States Magistrate Judge

Martin Luther King, Jr. Federal Bldg.
& U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102
(973-645-2580)

LETTER ORDER

August 22, 2016

To Pro Se Plaintiff Samuel Flores via U.S. Mail
To counsel of record via ECF

Re: Flores v. Green, et al.
Civil Action No.: 16-00901 (ES) (JAD)

Mr. Flores and counsel:

This will address Plaintiff's request for entry of default against Defendants Charles Green and Alfaro Ortiz, (ECF No. 12), Plaintiff's motion for default judgment against those defendants, (ECF No. 13), and Defendants Green and Ortiz's cross-motion for leave to file their answer out of time. (ECF No. 15). Pursuant to Federal Rule of Civil Procedure 78, the Court did not hear oral argument on these issues. Upon careful consideration of the parties' submissions, and for the reasons set forth below, Defendants' cross-motion for leave to file an answer, (ECF No. 15), is **GRANTED**. Plaintiff's applications for the entry of default and for a default judgment against Defendants Green and Ortiz, (ECF Nos. 12, 13), are **DENIED AS MOOT**.

On June 23, 2016, Defendants Green and Ortiz filed an Application for an Extension of Time to Answer, Move or Otherwise Reply Pursuant to Local Civil Rule 6.1. (ECF No. 10). On June 24, 2016, the Clerk of the Court granted that application, thereby extending those Defendants' time to respond to the Complaint through and including July 20, 2016. Defendants did not respond to the Complaint on or before that date.

On August 16, 2016, Plaintiff filed both an application for the entry of default and a motion for default judgment against Defendants Green and Ortiz. (ECF Nos. 12, 13). On August 17, 2016, Defendants Green and Ortiz filed an Answer, albeit out of time and without leave of Court. (ECF No. 14). The following day, those Defendants filed a motion for leave to file their Answer out of time. (ECF No. 15)

In Defendants' motion, counsel certifies that, while he was scheduled to have surgery on July 28, 2016, that procedure was moved up to July 18, 2016. (Cert. of Alan Ruddy ¶ 3, ECF No. 15-1). When he returned to work following that procedure, he mistakenly believed that his co-counsel had already filed Defendants Answer. (Id.).

In light of counsel's representations concerning the reason for Defendants' failure to timely answer, and considering that Plaintiff would not suffer any legitimate prejudice from the additional extension Defendants seek, and for good cause shown, Defendants' cross-motion, (ECF No. 15), is **GRANTED**. Defendants' time to respond to the Complaint is extended, nunc pro tunc, through and including August 17, 2016. Defendants' Answer, previously filed without leave of Court, (ECF No. 14), shall be deemed timely filed. As the Court has deemed Defendants' Answer to be timely filed, Plaintiff's applications for the entry of default and for default judgment, (ECF Nos. 12, 13), are **DENIED AS MOOT**.

SO ORDERED



JOSEPH A. DICKSON, U.S.M.J.

cc: Hon. Esther Salas, U.S.D.J.